

HIGH COURT OF UTTARANCHAL AT NAINIAL

Writ Petition No. 928 of 2003 (SS)

1.

Jagdish Prasad s/o late Sri Mana Nand Ghildiyal
R/o Dakpathar Colony & communication Division
D.C.C.D. Dakpathar, District Dehradun

2.

Dilbag Singh s/o Sri Banta Singh unnel & Power House
Division 1st Dakpathar, District Dehradun

3.

Budh Ram s/o Sri Jagan Mehto, Yamuna Construction
Division 1st District Derhradun.

4.

Ravi Kumar Bhatnagar s/o late K.P. Bhatnagar Earth
Moving Equipment Division, Dakpathar, District
Dehradun

5.

Hayat Ali s/o Sri Yazid Ali, Tunnel & Power House
Division 1st Dakpathar, District Dehradun

6.

Darwan Singh s/o late Hari singh r/o Investigation &
Planning Division, Barkot, District Dehradun

7.

Bhopal Singh Tyagi s/o Sri Om Prakash R/o Test &
Control Division, Dakpathar, District Dehradun

8.

Gulzar Singh s/o Sri Fauja Singh r/o Tunnel & Power
House Division, Dakpathar, District Dehradun

9.

Buta Singh s/o Sri Tulsa Singh r/o Tunnel & Power
House Division 1st Dakpathar, District Dehradun

10.

Rawal Singh s/o Sri Fauza Singh r/o Tunnel & Power
House Division 1st Dakpathar, District Dehradun

11.

Bhajneek Chand Gaggi s/o Sri Amar Nath r/o
Irrigation Construction Division 2nd Dhalipur, District
Dehradun

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Petitioners
- Versus
1.

State Uttaranchal

2.

Chief Engineer, Uttaranchal Shasan, Dehradun

3.

Chief Engineer, Karmik, Irrigation Department,
Yamuna Colony, Dehradun

4.

Superintending Engineer, Towns Civil Construction
Circle 1st Yamuna Colony, Dehradun

5.

Superintending Engineer, Irrigation Construction
Circle, Yamuna Colony, Dehradun

6.

Superintending Engineer, Lakhwar Nirman Mandal 2nd
Yamuna Colony, Dehradun

7.

Superintending Engineer, I.M.P. Circle, Yamuna
Colony, Dehadun

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Respondents

Dated: 21.8.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have prayed for a writ of mandamus directing the respondents to regularise the service of the petitioners. They further prayed for a writ of certiorari quashing the Officer Memo dated 31.3.2004.

According to the petitioners, petitioner no. 1 is working as operator Tubewell since 12.11.1969 on daily wages in Dakpathar colony, petitioner no. 2 has been working as Heavy Crane Operator since 11.2.1975, petitioner no. 3 has been working as Master Electrician since 24.2.1975, petitioner no. 4 has been working as Chargeman Fitter since 14.2.1968, petitioner no. 5 has been working as Master Mechanic since 1.11.1967, petitioner no. 6 has been working as Driller Grade I since 1.9.1980, petitioner no. 7 has been working as Master Mechanic since 19.3. 1971, petitioner no. 8 has been working as Chargeman Head Rigger since 21.8.1976, petitioner no. 9 is work as Chargeman Head Rigger since 24.7.1975, petitioner no. 10 has been working as Chargeman Head Rigger since 24.7.1975, and petitioner no. 11 is working as Electrician since 5.12.1974.

The petitioners have alleged that they are not being paid salary of regular employees including all service benefits together with bonus and pensionery benefits. The petitioners are working regularly for more than 13 years.

The petitioners are continuously representing before the respondents authorities for their regularisation but the respondents have paid no heed to the claim of the petitioners hence the writ petition.

The petitioners have also submitted that the department has taken steps on 11.7.2003 for regularization of the services of muster roll and work charge employees in the department, but the persons junior to the petitioners have been regularised.

Apex Court in the case State of Karnataka vs. Uma Devi, (2006) 4 SCC 1 has discussed in detail regarding regularisation of daily wages employees and observed as under:

“While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. But doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that

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people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such and employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.”

Thus in view of the observations made by the Apex Court in the case Umadevi (supra) no mandamus can be issued for regularization of the petitioners in the Irrigation Department.

However, it will be open for the petitioners to represent the authorities for their grievances, which shall be decided within a period of three months in accordance with rules.

In view of above, writ petition lacks merit and is hereby dismisses.

No order as to costs.

Dated: 21.08.2006
*Dhyani

Rajesh Tandon, J.